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*RELIGIOUS TESTS*

*IN*

*PROVINCIAL PENNSYLVANIA.*

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BY

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No provisions of the Constitution of the United States are more familiar to us and more clearly express the universal sentiment of the American people, or are in more perfect harmony with the historic consciousness of the nation, than those which forbid the National Government to establish any form of religion or to prescribe any religious test as a qualification for office held under its authority. Almost every other general principle of government embodied in that instrument has been discussed and argued about, and its application in particular cases resisted and questioned, until the intention of those who framed it seems lost in the Serbonian bog of controversy, yet no one has ever denied the rightfulness of the principle of religious liberty laid

down in the Constitution, and, so far as I know, only one instance has occurred in our history (that presented by the question concerning the polygamous marriages of the Mormons, claimed by them to be religious, but declared by the laws of the United States to be criminal) in which it has become necessary for the Supreme Court of the United States to determine judicially what are the bounds of the religious liberty guaranteed by the Constitution. In that case (*Reynolds vs. the United States*, 98 Supreme Court Reports) CHIEF-JUSTICE WAITE thus defines these boundaries:

“Laws are made for the government of actions, and while they cannot interfere with men’s religious belief and opinions, they may with the practice. Suppose one religiously believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government could not interfere to prevent a sacrifice? To permit this would be to make the professed doctrines of religious belief superior to the law of the land. Government could exist only in name under such circumstances.”

It is clear, then, that there are bounds to religious liberty, even under the Constitution and laws of the United States. The line must be drawn somewhere, and the Supreme Court has drawn it, for the present at least, at the point where the religious liberty guaranteed by the Constitution is invoked to justify polygamy and human sacrifices.

It is a curious and significant fact, showing the hearty general concurrence of the American people in these provisions, that while the Constitution of the United States does not prohibit the different States from establishing any form of religion and imposing such religious tests as each may deem proper, yet in point of fact, during the last hundred years, no form of religion has ever been established by the authority of any one of the States. Religious tests for office are as unknown under our State as under our National Government, although in many of the State Constitutions there is a reverent recognition of Almighty God as the founder of all human governments.

We are so familiar in these days with the practical applica-

tion of this principle of religious liberty that we are apt to forget that up to the period when it was guaranteed by the provisions of the Constitution of the United States it had never been recognized by law-makers as one of those so-called indefeasible natural rights of man in society, such as the enjoyment of life, liberty, and property, for the protection of which human governments have been chiefly designed. Of all the novel and untried experiments made by our fathers in the scheme of national government which they adopted, none was so untried and novel as this.

Theorists, especially in the eighteenth century, had talked much about religious liberty, and many philosophic writers had portrayed the evils of intolerance, and of persecution for the sake of religious opinion, as shown by the experience of mankind; but for the first time in the history of the world the framers of our National Constitution laid it down as a fundamental principle of government, that here there should be a perpetual divorce between the National Government and every form of religious establishment, and that while every man should be at liberty to express and maintain his religious opinions, those opinions should not abridge or enlarge his rights or capacity as a citizen.

What the result of the constant recognition ever since of these principles has been here it is certainly not necessary to enlarge upon. We may be permitted, however, to point with justifiable pride to the effect of our example on other nations. If the practice of universal toleration be, as Lord Brougham called it, "the noblest innovation of modern times," we must not forget that the signal for this great revolution came from this country, and that our success has made the practical application of a doctrine untried until we adopted it, because it was universally regarded as a highly dangerous theory, one of the most admirable and beneficial instruments of government ever employed for ruling mankind. This country has made at least two grand contributions to modern civilization,—the peculiarly American ideas of civil liberty and religious liberty. Both of these ideas found embodiment for the first time in history in our

national declarations and laws, and they found place there principally through the energy and philosophic insight of one man,—Thomas Jefferson. These ideas have become the most fruitful of all our political doctrines, and have gone forth from us to mould, for good or for evil, the destinies of the world.

It is important for the purpose we have in hand that we should recognize distinctly the difference between religious liberty and religious toleration. What is novel and peculiar about our system is that it establishes in its widest sense religious liberty, and that it provides for its maintenance sanctions and guarantees of the same binding force as those by which life, liberty, and property are secured, such as trial by jury, the *habeas corpus*, and the provisions in regard to the obligation of contracts. What, then, is religious liberty as understood and practised here for nearly a hundred years under the protection of law? “It consists in the right guaranteed by the laws of a country to each one of its citizens to maintain and propagate any religious opinion or celebrate any form of religious worship he may think proper, provided it is not in conflict with the fundamental ideas upon which the civil community is based. It includes protection for worship and property, and recognizes the right of religious association for such objects.” The first enactment of this principle into a law on this continent is found in the Constitution of Pennsylvania of 1776, and shortly afterwards in the “Bill for Establishing Religious Freedom,” adopted by the General Assembly of Virginia in October, 1777. This bill was drafted by Mr. Jefferson. It provides “that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief, but that all men shall be free to profess and by argument to maintain their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.”

Religious liberty thus defined excludes, of course, any



idea of a State or Established Church. Religious toleration, on the contrary, presupposes the existence of such a Church. The theory that the Church and the State are only two aspects of the same body politic (commonly called the Erastian theory) had prevailed generally in the Christian world, Catholic and Protestant, from the time of the Emperor Constantine down to that of the American Revolution. Heresy was made a crime against the State by the Roman Emperor, punishable, as other crimes, by the civil authority. So closely, indeed, were the State and the Church identified in Europe, that for fifteen hundred years to the orthodox Christian believer the heretic was worse than a foreign enemy; he was a revolted subject. Previous to the great revolution, however, which rent asunder the Church in the sixteenth century, the penalties against heresy were chiefly employed to punish defections from the faith, and as a means to restore to the bosom of the Church those who had erred. After the Reformation, a long and bloody experience taught both statesmen and churchmen that it was impossible to make men change their religious opinions by force or by the operation of penal laws. The people of Northern and Western Europe were permanently divided in their religious opinions, and it became more and more clear every day that an impassable barrier separated the populations of the different countries, which no fear of Church censures or of the penalties denounced by the State against heresy could ever bridge over.

Under these circumstances the penal laws against heresy in each country were employed for a purpose different from that for which they had been previously used. Conversion or restoration to the faith was no longer the main object. The doctrine, *cujus regio ejus religio*, that the religion of each country should be that of its ruler, Catholic or Protestant, became the prevalent one after the Reformation. This gave the power or made it the duty of the Chief of the State to prescribe for his people the religious belief and worship to which they should conform. This was not done, primarily or chiefly at least, because uniformity of belief was essential

to a due obedience of God's command, although of course such was the pretext, but rather because, as the history of that age clearly shows us, opposition to the religion of the State was the rallying-cry of those who were in rebellion against the authority of the ruler, civil as well as ecclesiastical. The laws against heresy, therefore, were used as a chief support of existing dynasties. Conformity was the test of loyalty. Non-conformity was evidence not only of heresy, but of disloyalty also. Dissenters were punished by the severest civil disabilities; indeed, they became practically aliens in their own country. In the civil and religious wars in France during the last half of the sixteenth century, in the Thirty Years' War in Germany, and to a great extent in the war of the rebellion in England, while the struggle was apparently to decide who should be the civil ruler of these countries, it was understood on all hands that the victorious party would impose its own religious creed and worship on the vanquished, and treat all subdued rebels as confirmed heretics. Of course in those days no one believed in the principle of religious toleration, still less had any one a conception of religious liberty. In this respect the Reformers and the Catholics stood on the same ground. While the Pope excommunicated Henry IV., Queen Elizabeth, and the leaders of the Reformation in Germany, Luther invoked the civil sword against the Anabaptists; Calvin burned Servetus; Cranmer burned Jane Boucher; Parker and Whitgift persecuted the Puritans; and if Cartwright, the first English Presbyterian, had been in their place, he would doubtless have persecuted in the same way the Baptists and Independents.

It was found impossible, however, to make men loyal by forcing upon them subscription to religious creeds distasteful to them, just as it had proved a hopeless task to make them religious by threats of persecution and martyrdom. It became therefore necessary throughout Northern and Central Europe, if there was to be any peace in communities hopelessly divided in religious belief, to recognize, however unwillingly, this fact, and to adopt some policy of gov-

ernment which should meet the difficulties presented by it. It was decided not to give up the theory of the State Church as rightfully claiming the allegiance of all persons in the community, but to allow to Dissenters from it as little toleration for their peculiar forms of belief and worship as might be consistent with the safety and supremacy of the State religion, in which it was supposed that the peace and safety of the State government were involved. The grant of this limited toleration was a necessity born of the peculiar conditions of each country, and we find examples of it in such well-known acts as the Edict of Nantes, issued by Henry IV. in 1598, in those articles of the Peace of Westphalia in 1648 which gave a certain restricted toleration to Protestants in the Catholic States of Germany, and especially in the famous Act (strangely called an act of toleration) of the first year of William and Mary in England, in 1689, the first Toleration Act in that country, which exempted, on certain conditions, Dissenters from the Church of England (but not including in those exemptions Roman Catholics, Socinians, or Jews) from the penalties and disabilities imposed by the laws against non-conformity.

I have given this slight historical sketch of the relations between the governments of the different countries in Europe from which our fathers came, and Christianity as variously organized in those countries during the seventeenth century, in order to show how little encouragement their example and practice gave to those statesmen who embodied the principle of religious liberty in our Constitution. Everywhere was found a State or Established religion, and everywhere (except, perhaps, in Holland) civil disabilities were imposed upon those who dissented from it. It is, of course, well known that the intolerable burdens which they suffered from the laws against non-conformity formed the chief motive which induced most of the emigrants, especially the English, to seek for quiet homes on these shores; and yet it is equally well known that notwithstanding the bitter experience which so many of the exiles had had of the evils of an established religion in their native lands, and

the sacrifices which they had made to escape from them, the history of this country during the Colonial period shows that some form of religion, dissent from which involved serious civil disabilities, was established in nearly all of the Colonies by virtue of either the local or the imperial law. The principle of a State or Established religion, so far at least as it made the full enjoyment of a man's civil rights dependent in a good degree upon his conformity to it, prevailed, with the exception of a limited period during the early days, throughout the Colonies from the settlement of Virginia in 1609 down to the period of the American Revolution; and such was the case notwithstanding the principles and the example of such great founders as Roger Williams, Lord Baltimore, and William Penn, of whose beneficent legislation in regard to religious toleration our Colonial codes at the time of the Revolution bore scarcely a trace. The truth is that during the Colonial period we were essentially a nation of Protestants, with fewer discordant elements outside Protestantism than were then to be found in any country of Europe, and that we, forced to do so, either by our own earnest conviction that such was the true method of supporting religion, or by the laws of the mother-country, took similar methods of maintaining and perpetuating our Protestantism, excluding those who dissented from it from any share in the government, and frankly adopting the policy which had prevailed in England from the time of Queen Elizabeth.

It seems strange that in a country and during a period when the slightest symptom of an encroachment on the part of the Crown or the Parliament upon what we claimed as our civil rights was jealously watched and warmly protested against, there should seem to have been no outspoken opposition of a general nature against ecclesiastical arrangements such as those I have described. There were, it is true, in some of the Colonies, especially New York, at times, "ineffectual murmurings" against laws which forced people to pay taxes for the support of a ministry whose teachings were not in harmony with the religious sentiment

of the great mass of the inhabitants, and in Pennsylvania there was a long and at last a successful struggle to induce the Imperial Government to regard the affirmation of a Quaker as equivalent to the oath of another man; but if there were any men in our Colonial history who, after the example of Williams, Penn, and Lord Baltimore, lifted up their voices to protest, as these men had done, against the violation of the principle of religious liberty here, I have not been able to discover their names. The only subject of a quasi-ecclesiastical nature which appears to have excited general interest and to have met with determined opposition was a scheme at one time said to have been in contemplation of sending Bishops to this country. It was opposed, not so much because it was thought to be the first step towards forming a Church establishment in this country, as because the Colonists had a peculiar abhorrence of the methods of enforcing the jurisdiction of the English Church as they were familiar to them in the old country. While the Colonists may have forgotten many of the sufferings which they had endured in England in consequence of their non-conformity, and even committed themselves to a theory of Church establishment, there was one thing they never could forget, and that was the arbitrary prelatial government of Laud and the High Commission, and upon this were founded the popular notions of the authority wielded by Bishops.

From all this it would appear that Mr. Jefferson and his contemporaries, when they sought, at the beginning of the Revolution, to embody in fundamental laws the principle of absolute religious liberty, found as little in the history of the Colonies as in that of Europe to encourage them to hope for success in their experiment.

I am well aware that these statements of the general prevalence of a principle here during the Colonial period, which in contrast to that now universally recognized I must call the principle of religious intolerance, will appear to many too wide and sweeping. But a very slight examination of the provisions on this subject in the laws of the

Colonies will, if I mistake not, produce a different impression. In Virginia, where the English Church was early established by law and endowed, men who neglected or refused to bring their children to be baptized were punished by civil penalties; Quakers were expelled from the Colony, and should they return thither a third time they were liable to capital punishment. Any one who denied the Trinity or the truth of the Christian religion was deprived by the Act of 1704 of his civil rights, and was rendered incapable of suing for any gift or legacy. In New England, except in Rhode Island, religious intolerance was very bitter. It is true that in Massachusetts, under the Charter of 1691, the power of committing those barbarous acts of persecution of which the theocracy under the old standing order had been guilty was taken away, and all Christians, save Roman Catholics, were permitted to celebrate their worship, yet none but members of the Congregational Church could be freemen, and all were taxed for the support of the ministry of that Church. In Maine, which was a District of Massachusetts, in New Hampshire, and in Connecticut the same general system of religious intolerance prevailed. Conformity was the inflexible rule throughout New England. In New York, the Dutch were protected by the provisions of the Treaty of Breda, which guaranteed them the possession of the property then held there for religious purposes, and their ecclesiastical organization. But the royal Governors of that Province expelled any Catholic priests who might be found within their territory, on the plea that they were inciting the Indians to revolt against the government, and they established the English Church, so far as it could be done in a Province where the Episcopalians were very few in number, by requiring each of the towns to raise money for the support of the clergy of that Church, by dividing the country into parishes, and by exercising the power of collating and inducting into these parishes such Episcopal Rectors as they thought fit. In New Jersey, after the surrender of the Charter, when the Colony came directly under the royal authority, in 1702, liberty of conscience was

proclaimed in favor of all except Papists and Quakers; but as the latter were required to take oaths as qualifications for holding office or for acting as jurors or witnesses in judicial proceedings, they, of course the great mass of the population, were practically disfranchised. But the story of the arbitrary measures taken by the Governor of this Colony, Lord Cornbury, to exclude from office or the control of public affairs all except those who conformed to the Church of England is too well known to need to be retold here. In Maryland the English Church was established in 1696, and one of the first acts of the newly-organized Province was to disfranchise those very Catholics and their children by whom the doctrine of religious liberty had been established in the law of 1649. In Carolina, after the fanciful and impracticable Constitution devised for it by the celebrated philosopher John Locke had been given up, by which the English Church had been established and endowed in the Colony, the Church feeling was so strong and the determination to secure its supremacy so unyielding, that an Act was passed in 1704 requiring all members of the Assembly to take the sacrament according to the rites of the Church of England. Georgia, following the example of her elder sisters, gave free exercise of religion to all except Papists, and such rights in this respect as any native-born Englishman at that time possessed; a grant, as we have seen, of very doubtful value to English non-conformists, then ruled by the tender mercies of the Toleration Act.

The result of this review is to show that in all the Colonies I have named, except perhaps Rhode Island, liberty of worship was the rule, excepting, of course, in the case of the Roman Catholics. Throughout the Colonies, at the beginning of the eighteenth century, the man who did not conform to the established religion of the Colony, whether it was Congregationalism in New England, or the Episcopal form elsewhere, was not in the same position in regard to the enjoyment of either civil or religious rights as he who did conform. If he were a Roman Catholic, he was everywhere wholly disfranchised. For him there was not even the legal

right of public worship. If he were a Protestant differing in his creed from the type of Protestantism adopted by the rulers, although he could freely celebrate in nearly all the Colonies his peculiar form of worship, he was nevertheless excluded from any share in public affairs. He could neither vote nor hold office, and he was forced to contribute to the support of a religious ministry whose teachings he in his heart abhorred. And this condition of things, extraordinary as it seems to us now, had not been brought about by any conscious, arbitrary despotism on the part of the rulers, but was the work of good but narrow-minded men who were simply following out the uniform practice of the Christian world, and who no doubt honestly thought that in so acting they were doing the highest service by obeying the will of God.

I have grouped together these accounts of the various civil disabilities under which dissenters from the legally established religion suffered in the different Colonies, in order to compare them with the Provincial legislation in Pennsylvania on the same subject. Of whatever sins of intolerance our forefathers in this Province may have been guilty (and I shall show presently that they were many), they were certainly not of the same nature as those of their neighbors. Here, no men or women were ever burned because they were heretics, or expelled from our territory because they were schismatics. We never punished any one on account of his speculative opinions, or because he did not conform to the rites and usages of any form of religion. We had no established Church here, whose clergy was supported by general taxation. In every period of our history we permitted the celebration here of the rites of any form of Christianity, even that of the Roman Catholics, for it is said by Hildreth, the historian, that the Catholic Church of St. Joseph in this city was the only place in the original thirteen States where the mass was permitted to be publicly celebrated prior to the Revolution. All this is true; and yet it is equally true that no one ever held office in this Province, whether under the Crown or the Proprietary, from 1693 to



1775, who was not by law required, as an indispensable condition precedent, to make and subscribe a solemn declaration of his religious faith (which he confirmed by his oath or affirmation), in which he asserted that he did not believe that in the Holy Eucharist there was any transubstantiation, at any time or in any way, of the bread and wine used therein, and that he regarded the invocation of the Virgin Mary and of the saints as superstitious, and the Popish mass as idolatrous. For many years also, I cannot tell precisely for how many, the intending office-holder was obliged to declare under oath that he believed in the Holy Trinity according to the Athanasian definition of that sublime mystery. And, more than this, none but Protestants were permitted by the Provincial laws to hold land for the erection of churches, schools, or hospitals, nor could any foreigner be naturalized unless he was a Protestant.

Certainly, if this be a correct account of the civil disabilities imposed by the laws of this Province upon Roman Catholics, Socinians, or Unitarians, Jews, and Infidels, it presents a very different picture of the condition of things here from that which has been generally accepted or given us by writers on Pennsylvania history. If we study the standard histories of the Province, such as those of Proud, Gordon, and Dr. Franklin, and the more general histories of the United States during the same period, in which accounts of Pennsylvania form so conspicuous a part, or if we consult the accounts of the life of William Penn given us by Clarkson or Janney, Dixon or Forster, we find these writers, differing in many things, all agreeing upon one point,—namely, that Pennsylvania during the Provincial period was the classic land of religious liberty; that here freedom of conscience was the corner-stone of the foundation upon which the Commonwealth was built; that consequently the fabled golden age of history actually existed in this Province from the beginning to the year 1754, when the Quakers lost control of the government; that the rapid increase of the population of the country and its wonderful prosperity during that period were chiefly due to the acceptance of Penn's

invitation by the oppressed of every creed and nation, who came here to enjoy a perfect equality of rights, civil and religious, guaranteed to them by fundamental laws. This opinion of Penn's government is not confined to our local historians. The general judgment may be summed up<sup>1</sup> in the statement of Edmund Burke in his "Account of the European Settlements in America." "William Penn," says Mr. Burke, "made the most perfect freedom, civil and religious, the basis of his establishment, and this has done more towards the settling of the Province, and towards the settling of it in a strong and permanent manner, than the wisest regulations could have done on any other plan. All persons who profess to believe in one God are freely tolerated, and those who believe in Jesus Christ, of whatever denomination, are not excluded from employments and posts."

It is certainly an ungracious task for a Pennsylvanian to be forced to relegate stories so flattering to our local pride to that region of myth and legend, outside the domain of true history, in which modern researches have placed so many tales of heroism and virtue long universally regarded as genuine history. Still, it is a consolation to know that if the truth must be spoken, and if we must hear it, it can in no way diminish the reverence with which we, in this generation, regard the august and imposing historical figure of William Penn. Nor can a knowledge of the truth make us doubt for a moment the earnestness of our great Founder's convictions in regard to liberty of conscience, or of his persistent efforts to obtain its universal recognition. What I propose to show is, that what was done here in violation of that principle was done by a power over which he had no control.

In regard to Penn himself, indeed, it seems to me that the more we study his life and career the grander and more heroic his character becomes. Of all the modern apostles of liberty of conscience his principles were the widest and

<sup>1</sup> See Clarkson's *Life of Penn*, vol. ii. p. 422, *et seq.*, where the English authorities on this point are collected.

most comprehensive of any that had been up to that time promulgated. From 1670, shortly after he began his public ministry, down to 1689, when the famous English Toleration Act was passed (of which, although its provisions fell far short of what he desired, he is the reputed father), scarcely a month passed in which he did not earnestly advocate in tract and pamphlet and in public addresses the adoption by law of that universal principle of liberty of conscience which we now enjoy. While he himself held to a religious faith novel and strange, and regarded by the generation to which it was first preached as in the highest degree fanatical, yet he never swerved from advocating the principle of universal freedom of religious opinion as the outcome of that faith. Nothing is more striking than the honesty, nobleness, and courage with which he maintained at all times the universality of that principle. In a speech before a Committee of the House of Commons, for instance, in 1678, when the people of England, panic-stricken by the terrors of the supposed Popish plot and seeking victims for their vengeance, were strangely led to assimilate the opinions of the Quakers with those attributed to the Roman Catholics and to deal out the same punishment to both, Penn thus calmly and nobly meets the storm of popular fury :

“I am far from thinking it fit, because I exclaim against the injustice of whipping Quakers for Papists, that Papists should be whipped for their consciences. No; for though the hand, pretended to be lifted up against them, hath, I know not by what discretion, lighted heavily upon us, and we complain, yet we do not mean that any should take a fresh aim at them, or that they should come in our room, for we must give the liberty we ask, and cannot be false to our principles though it were to relieve ourselves; for we have good will to all men, and would have none suffer for a truly sober and conscientious dissent on any hand.”

It may be well said of William Penn that no one who ever suffered so much for holding unpopular opinions did more to succor those who were in a common condemnation with him. His zeal in this matter no doubt frequently out-

went the bounds of worldly prudence, and led him into some mistakes of conduct for which he suffered bitterly. Still, of no man can it be more truly said, "E'en his failings leaned to virtue's side."

He was a true apostle, his soul fired by enthusiasm for a great cause and for his "Holy Experiment." His best monument is not to be found in the religious liberty which, in spite of his best efforts, he failed to establish permanently in his Province, but in the universal practical recognition in later days of his principles, both in the great Republic of which Pennsylvania forms so important a part, and in his native England. William Penn was no wild visionary in his schemes, but a true Englishman with an eminently practical turn of mind. He knew exactly what reforms were needed, and he bent all his energies not merely to talk about their excellence, but to secure their adoption. He was no Sir Thomas More, with speculative opinions in favor of the widest liberty of conscience, yet dying on the scaffold rather than renounce the supremacy of the Church over his own particular conscience; he was no John Locke, the type and model of the modern English Whigs in matters of religious toleration, whose theory was too narrow to include the Catholics within its limits; and he certainly bore no resemblance to Condorcet, the French philosopher, who, when told that his project for the immediate emancipation of the slaves would destroy the French colonies, and with them the French power, exclaimed "*Périssent les colonies plutôt qu'un principe.*" Far different was the conduct of Penn. He advocated, it is true, liberty of conscience upon the highest grounds of right, but he did not hesitate to enforce his views by telling his countrymen that by adopting them the strength and material prosperity of England would be vastly increased. From his many writings on this subject I select as an illustration of his practical statesmanship an extract from a work called "A Persuasive to Moderation," in order to show how, when occasion required, he could use arguments which seem strange enough to us, coming from a Quaker:

“As things now stand,” he says, “no Churchman means no Englishman, and no Conformist means no subject. Thus it may happen that the ablest statesman, the bravest captain, and the best citizen may be disabled, and the Prince forbid their employment to his service. Some instances we have had since the late King’s restoration; for upon the first Dutch war, my father being commanded to give in a list of the ablest sea officers in the kingdom to serve in that expedition, I do very well remember he presented our present King with a catalogue of the knowingest and bravest officers the age had bred, with this subscribed: ‘*As to these men, if his Majesty will please to admit of their religious persuasion, I will answer for their skill, courage, and integrity.*’ He picked them by their ability, and not by their opinions, and he was right, for that was the best way of doing the King’s business. And of my own knowledge, Conformity robbed the King at that time of ten men whose greater knowledge and valour than any one ten of that fleet had in their room, would have saved a battle or perfected a victory.”

How then, we naturally ask, did William Penn, with such principles as these, and with such powers as were conferred upon him by his Charter, fail in bringing to a successful issue here his “Holy Experiment,” as he called it? To understand this a somewhat detailed examination of his relations with political parties in England and with public opinion there on the great question of the time—that of religious toleration—becomes necessary.

The Charter granted by Charles II. to Penn gave him as Proprietary ample powers of government in all matters ecclesiastical as well as civil. There was but one reservation or qualifying clause in it in regard to religious toleration, and that provided merely that the Bishop of London should have power to appoint a chaplain for the service of any congregation, consisting of not less than twenty persons, who might desire such a minister. Such a provision, of course, did not interfere with Penn’s general plan, but was rather in full accordance with it. The fatal defect of the Charter, which rendered, in practice, many of its provisions nugatory, is found in the seventh section, by which it was ordered that all laws passed by the Assembly of the

Province should be transmitted to the Privy Council in England, and an arbitrary power was reserved to that body to disallow and repeal the same within five years after their passage. This power was freely exercised by the Privy Council during the history of the Province, and indeed at all times whenever the exigencies of the Imperial policy (apparently the only guide) seemed to that body to require it. Practically, therefore, the most wholesome laws enacted by the people for their own government were by the provisions of the Charter itself wholly at the mercy of the Privy Council. By the action of this body the wishes of the people of the Province were often wholly ignored, and in the end the policy of Penn was actually reversed. In studying the legislation of the Province, we must not forget this double process through which all laws passed before they became operative. We may ascertain, perhaps, what were the opinions of the people on any given subject, by examining the law passed by their Proprietary and the Assembly; but if we desire to know what was really the final form which the law here took, we must discover whether the Privy Council allowed or disallowed the Provincial statute which enacted it.

On the fifth of May, 1682, a frame of government and certain fundamental laws were agreed upon provisionally in England between Penn and many of the intending Colonists. This body of laws, known as the "great law," was submitted by Penn to the freemen of the Province, assembled at Chester in December, 1682, and adopted by them. In this code were the following laws, one "concerning liberty of conscience," the other "respecting the qualification of officers of the government." By the first it was provided "that no person now or hereafter living in the Province who shall confess one Almighty God to be the Creator, Upholder, and Ruler of the world, and professeth him or herself obliged in conscience to live peaceably and justly under civil government, shall in any wise be molested or prejudiced for his or her conscientious persuasion and practice, nor shall be obliged at any time to frequent or maintain any religious worship, place, or ministry contrary to his or

her mind, but shall freely and fully enjoy his or her liberty in that respect without any interruption or molestation." By the other it was provided that all the officers of the Province, as well as the electors, should be such as professed faith in Jesus Christ.

Under these provisions in regard to religious toleration the Province was governed for more than ten years. No complaint seems to have been made in regard to their operation either by the Home authorities or by the Quaker inhabitants, although Penn, as a practical exhibition of his principles, naturalized both the Swedish Lutherans and the Reformed Dutch whom he found here, by one of the laws passed at Chester. Unfortunately, as the event proved, while everything seemed to encourage his hopes of the success of "the Holy Experiment," Penn felt it necessary to return to England after a residence here of less than two years. He embarked in June, 1684. The motive for his return was twofold. He wished to bring to a settlement his dispute with Lord Baltimore concerning the boundaries of their respective Provinces, and he was moved by a strong desire to use any influence he might have at Court for relieving the sufferings of his poor brethren, large numbers of whom were then languishing in prison, undergoing the penalties prescribed by law against dissent. He was measurably successful in accomplishing both objects. He obtained from the Commissioners of Trade and Plantations a favorable report in regard to his boundary claims, and by his influence with James II., who became King soon after his arrival, he secured the release of about thirteen hundred Quakers, who were then imprisoned for their religious opinions. Strange as it may seem, it is to the methods which he took in doing this great and beneficent work that we must ascribe the bitter opposition and hatred with which he was assailed by the political party then dominant in England. It is sad to reflect that to his zeal in doing good, mistaken according to the standard of that time, were due those trials and misfortunes which pressed so hardly upon him during the remainder of his life, involving the loss of

his government and of his fortune, and the total subversion of his wise plans for ruling his Province.

When he reached England, in December, 1684, he found the nation in a perfect frenzy of excitement, roused by the supposed designs of the King to favor the Catholics by granting them religious toleration. The humiliations which the English nation had undergone because their King had become the pensioner of Louis XIV., and as such pledged to support absolutism in the government and to give legal protection to Popery in England (although the depths of servility to which Charles had sunk were not so well understood then as they are now), were most keenly felt and roused the deepest indignation. The public mind was kept in a state of constant terror by alleged plots on the part of the Catholics to overturn the government. Charles II. was generally regarded as a concealed Catholic. The Duke of York, afterwards James II., was well known as a professed and ardent adherent of that creed. Never had the country been more intolerant. Any form of dissent from the Established Church, whether the Dissenter was Protestant or Catholic, became odious to the mass of the people. Perhaps the most striking illustration of this panic-struck condition of the public mind is to be found in the fact that in no reign in English history are to be found a greater number of Acts of Parliament imposing penalties upon Dissenters than in that of Charles II.

Although William Penn, shortly after his return, had been received by Charles II., and interceded with him on behalf of his imprisoned brethren, he soon found that in the condition of things which then existed it was hopeless to expect that the royal favor would be extended to them. Charles II. died on the twelfth of February, 1685, having been attacked by an apoplexy, which was treated, according to Penn, by some strange remedies, among others "plying his head with red-hot frying-pans." James II. then ruled in his stead. Here, Penn no doubt thought, was his opportunity. The man who had been his friend from his boyhood, who had been his father's friend, to whose care that



father on his dying bed had confided him, the man who had always professed his belief in Penn's principle of liberty of conscience, was now the all-powerful King, able, and no doubt willing, to release from prison and from further persecution his brethren in the faith. Unhappily for the King, in his anxiety to secure religious toleration as speedily as possible he chose to set at defiance the laws of his country, and to suspend by his own authority the penalties provided by Acts of Parliament for non-conformity. The two "Declarations of Indulgence," as they were called, issued for this purpose by King James shortly after his accession, proved, as is well known, fatal to him, leading to his dethronement and banishment. We may approve his motives, even if we condemn his methods. But the storm of unpopularity which overwhelmed the King overtook Penn also. He and his Quaker brethren were bitterly denounced because they availed themselves of the liberty granted by the Declarations of Indulgence. It was said that they should not have accepted even this priceless gift when the law was violated by granting it to them. This is a question of casuistry which I do not care to discuss any more than did the suffering Quakers of that day. The result, however, was, so far as Penn and his friends were concerned, that, in the feverish state of public feeling, they were more suspected and hated than ever. Penn himself was constantly spoken of, even by well-meaning people, as a Papist, as a Jesuit, as a pupil of St. Omer, and even as an emissary of the Pope; his liberty and even his life were threatened by legal proceedings; and it would seem that even some of the brethren of his own faith began to distrust him, because he was said to have encouraged the King to set his authority above that of Parliament. It is doubtless for this reason, for it has been clearly shown that there can be no other, that Penn's character has been held up to the scorn and contempt of the present generation by the fervid rhetoric of the great champion of Parliamentary supremacy, the Whig historian, Lord Macaulay.

While Penn was thus losing his influence and making

many powerful enemies in England, his government in Pennsylvania was not working smoothly. The authorities of the Province in the absence of the Proprietary seemed incapable of ruling wisely. They impeached and turned out of office, on what were considered by Penn very frivolous grounds, the Chief Justice, and the Clerk of the Provincial Council; they were involved in constant disputes in regard to their jurisdiction over "the territories" (as the present State of Delaware was then called); while their proceedings against George Keith, the apostate Quaker, gave great offence to the Churchmen in the Province, and were made the pretext of violent denunciations in England against the administration of Penn's government.

On the accession of William and Mary in 1688, Penn not only lost, of course, all his power, but owing to his intimacy with James II. he was thrice arrested and brought before the Privy Council, charged, not, as formerly, with heretical opinions, but with treasonable acts. No evidence was ever produced to sustain these charges, and he was set at liberty. He was still the object of so much suspicion that he was obliged to remain in what is euphuistically called "retirement,"—in plainer words, in hiding,—lest he should be again arrested on charges made by infamous informers. Hence he was unable, as he had intended and desired, to return at once to his Province; a great misfortune, as it afterwards proved. At last his enemies became so powerful with the Ministry that they induced it to depose him from his government and to place the Province in the hands of Colonel Fletcher, then Governor of New York, to be ruled as a Crown colony. The commission to Fletcher is dated October 21, 1692, and after reciting the powers conferred upon him as Governor of New York, among others, "that he should summon a General Assembly, the members of which before entering upon their duties should take the oaths prescribed by the Act of Parliament to be taken and subscribe the tests therein laid down," extends these provisions to the government which he was directed to assume in Pennsylvania.

As this was the first attempt to introduce here special religious tests as a qualification for office, it becomes important to understand what was the nature and history of these tests. The Act of Parliament referred to in Fletcher's commission was that of 1 W. & M., c. 18, entitled "An Act exempting their Majesties' Protestant subjects dissenting from the Church of England from the penalties of certain laws," otherwise known as the famous Toleration Act. By this Act all Protestant Dissenters (the Act, of course, did not apply to Churchmen or Roman Catholics) who wished to celebrate their worship publicly without exposing themselves to the penalties of the laws against non-conformity were obliged to make a Declaration of fidelity and allegiance to the Sovereign, and to take and subscribe the test,—that is, a Declaration of their disbelief in transubstantiation and of their condemnation of the practice of the invocation of the Virgin Mary and the Saints.

If the Dissenter was a Presbyterian preacher, he was further obliged to profess his assent to all the Articles of the Church of England, except that which asserts that the Church has power to prescribe the rites and ceremonies of worship; if he was a Baptist, he was excused from declaring that he believed infant baptism desirable or necessary; if he was a Quaker, he was required to profess his belief in the Trinity according to the Athanasian formula, the object being to force these harmless sectaries to disown that sort of Socinianism which was supposed to be taught in such books as William Penn's "Sandy Foundations Shaken."

These declarations and tests required by the Toleration Act were intended in England simply to secure to Dissenters the freedom of their worship. In Pennsylvania they became, by virtue of the construction which Fletcher placed upon the powers conferred by his commission, indispensable qualifications for holding any office or post of honor, trust, or emolument in the Province, and as such, from his time down to that of the Revolution, they were (with the exception of that relating to the Holy Trinity) imposed indiscriminately, when imposed at all, upon all intending office-holders,

whether they were Churchmen or Dissenters, Presbyterians, Baptists, or Quakers.

When Fletcher met the Assembly, in March, 1693, there was a feeble remonstrance made by that body against recognizing his administration, in the absence of Penn, as other than provisional, and a claim was more strongly urged, not against taking the Declarations and Tests (which no one seems to have objected to), but against confirming them by their oaths, and not, according to Quaker usage, by their affirmations. The Assembly, however, was told by the Governor that the absence of Penn was the least of the motives which had brought about his own appointment, and the members, as a matter of grace and indulgence, were permitted to affirm instead of to swear to their belief in the Declarations required of them.

In 1694, the animosity against Penn in England having somewhat cooled, the King, moved by the intercession of noblemen powerful at Court who were Penn's strong personal friends, and who represented the true worthiness of his character and the great sacrifices he had made in carrying out his plans, restored his government and Charter to him. Penn at once made preparations for his return to the Province, but he was detained in England by public business, and by the sickness and death of his wife and of his eldest son. He therefore gave a commission to his cousin, William Markham, as Governor, with full power to administer the affairs of the Province during his absence.

In 1696, at an Assembly summoned by Governor Markham, "A New Act of Settlement," as it was called, was agreed upon, being the third frame of government established here within fourteen years. In this instrument it was provided that all public officers in the Province, before entering upon office, should make the declarations and take the tests required by the Toleration Act. It will be observed that these tests are the same as those required under Fletcher's rule, which, so far as Penn was concerned, may be regarded as a usurpation. They were, of course, utterly unlike that belief in God and faith in Jesus Christ

which Penn had made the only religious tests by the laws passed at Chester in 1682. How such tests could be imposed under Penn's direct authority in 1696 it is hard to understand. Perhaps an explanation may be found in that fear of losing his Charter which was constantly before Penn's eyes, or he may have acquiesced in the change from a conviction that no larger freedom of conscience was then practicable in the Province than that granted by the terms of the Toleration Act in England. However that may be, when Penn returned to the Province in 1699, his views on this subject seem to have undergone a complete change, if those views are to be regarded as reflected in the legislation under Markham. He exhibited all the fervor of his early faith in the largest religious liberty. Notwithstanding all the trials and persecutions which he had undergone during the twelve preceding years for his strenuous advocacy of that principle, notwithstanding the proceedings under Governor Fletcher to which presumably he did not consent, and the tests imposed by Markham in 1696 in which he certainly did acquiesce, he, at the first opportunity, restored his original scheme for securing freedom of conscience in its fullest integrity. In the year 1700 he proposed certain laws to an Assembly held at New Castle,—notably two,—the first entitled "The Law concerning liberty of conscience," the other, "An Act in regard to the attests of certain officers." By these Acts the only qualifications required, both of voters and of office-holders, were thenceforth to be that belief in God and faith in Jesus Christ which had been made the basis of his plan of government by the concessions agreed upon in England, and by the laws passed at Chester in 1682. So determined was he to maintain these provisions as a fundamental part of his government, that upon the surrender of the old Charter by the freemen in 1701 he granted a new one, in which the provisions in regard to religious tests are precisely the same as in the law of 1682. He was evidently resolved that this fourth frame of government should be the last and best expression of his opinions in regard to liberty of conscience, and he therefore solemnly

“declared, promised, and granted, for himself and his heirs, that the first article of this Charter relating to liberty of conscience, and every part and clause thereof, according to the true intent and meaning thereof, shall be kept and remain without any alteration inviolably for ever.”

Alas for the fallacy of human hopes and promises! This perpetual guarantee did not last two years. William Penn had evidently overrated his power of establishing permanently here either liberty of conscience or any other of those peculiar ideas of government which distinguish him as a law-giver. His charter never seemed to stand in the way when it pleased the authorities at home to carry out an Imperial policy in direct violation of its provisions. Even at that time, and with that purpose in view, so as to render the accomplishment of their object more easy, the Government had introduced into the House of Lords a Bill to take away his Charter from him. The fear lest success should attend this movement rendered it necessary that he should return to England, and his enforced absence from the Province during the critical period which followed was the greatest misfortune that could have happened to it. On his arrival in England his influence soon put a stop to these proceedings. Still, the hostility of those who sought to bring all the colonies under the direct control of the Crown was not disarmed. In 1702, Queen Anne issued an order directing that all those who held any public office in any Colony in this country, whether that Colony was royal, chartered, or proprietary, should take the tests and make the declarations required by the Imperial Toleration Act so often referred to. In March, 1703, Colonel Quarry, the royal Judge of Admiralty in this District, appeared before the Pennsylvania Provincial Council, and, exhibiting the Queen's mandate, requested that the members of the Council, in obedience to it, should at once take the tests and make the declarations required. This Colonel Quarry is described by some writers as a “zealous Churchman;” but he is spoken of by Penn, in one of his letters to Logan, in terms such as he seldom used even concerning his bitterest

enemies, as "one of the greatest of villains whom God will make in this world, I believe, for his lies, falsehood, and supreme knavery." He was, no doubt, a violent enemy of Penn, of his government, and of the Quakers generally. How far he was responsible for the extension of the Queen's order to this Province, or how far he was in league with Lord Cornbury for that purpose, does not appear. The members of the Council hesitated in obeying this order. They urged, as was natural, that they were magistrates chosen in pursuance of the provisions of the Royal Charter of Charles II., that they had been duly qualified for the execution of their offices, according to the terms of a law passed in 1700, under the authority of that Charter, that this law had never been disallowed or repealed by the Privy Council in England, and that therefore it was in full force, a simple order of the Queen not being regarded by them as sufficient to supersede the Charter, or the laws made in pursuance of it. These remonstrances proved, however, of no avail. The members of Council, the Judges, and all the other officers, with a weakness and cowardice which strongly excited Penn's indignation when he heard of it, took and subscribed the tests as required, and confirmed their act by their oaths or affirmations. In October, 1703, the same tests were taken by all the members of the Assembly before they entered upon their duties. The tests were in the words :

"We and each of us do for himself solemnly promise and declare that we will be true and faithful to Queen Anne of England, etc. And we do solemnly promise and declare that we from our hearts abhor, detest, and renounce as impious and heretical that damnable doctrine and position that Princes excommunicated or deprived by the Pope or any other authority of the See of Rome may be deposed or murdered by their subjects, or any other person whatsoever. And we do declare that no foreign prince, person, prelate, state, or potentate hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within the realm of England, or the dominions thereunto belonging.

"And we and each of us do solemnly and sincerely pro-

ness and testify that in the Sacrament of the Lord's Supper there is no transubstantiation of the elements of bread and wine into the body and blood of Christ at or after the consecration thereof by any person whatsoever, and that the invocation or adoration of the Virgin Mary or any other Saint, and the sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous.

“ And we and each of us for himself do solemnly profess, testify and declare that we do make this declaration in the plain and ordinary sense of the words read to us, as they are commonly understood by English Protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted for this purpose by the Pope or any other authority whatsoever; and without any hope of any such dispensation from any person or authority whatsoever, or without thinking that we are or can be acquitted before God or man or absolved of this Declaration or any part thereof, although the Pope should dispense with or annul the same, or declare that it was null and void from the beginning.

“ And we the said subscribers, and each of us for himself, do solemnly and sincerely profess faith in God the Father, and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore. And we do acknowledge the Holy Scriptures to be given by Divine inspiration.”

It will be remembered that the chief reason given by the members of the Council against taking these tests when required to do so by the Queen's order was, that there was really no legal authority to impose them, the law of the Province passed in 1700 directing the members to be qualified in a different way. This plea for resistance was soon swept away by the Home Government. The authorities in Pennsylvania were notified that the Privy Council in England, by virtue of the authority reserved to the King by the Charter of disallowing and repealing all laws enacted by the Assembly within five years after their passage, had, on the seventh of February, 1705, disallowed and repealed many laws passed at New Castle by the Assembly in the year 1700. Among these laws there were two very important



ones,—the first the great “law concerning liberty of conscience,” in which Penn’s favorite conception of religious liberty had been embodied, the other concerning “the attests of certain officers,” by which the only qualification required for office or for voting was a promise of fidelity to the Government. In order to show the determination of the English Ministry to confine the enjoyment of civil rights in this Province to those only who were willing to subscribe to the narrowest and most technical religious creed, I quote the opinion of Sir Edward Northey, then Attorney-General, giving his reasons why the “Law concerning liberty of conscience” should be disallowed by the Privy Council :

“I am of opinion that this law is not fit to be confirmed, no regard being had in it to the *Christian religion*, and also for that in the indulgence allowed to the Quakers in England by the Statute of 1 W. & M., c. 18 [the Toleration Act], which sort of people are also the principal inhabitants of Pennsylvania, they are obliged by declaration to profess faith in God, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore, and to acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration, and also, that none can tell what the conscientious practices allowed by this Act may extend to.”

Immediately upon receiving notice of the repeal of this Act by the Privy Council (strange and incredible as it may seem), the Assembly, wholly forgetful of the lessons and example of William Penn, passed a new law concerning liberty of conscience, by which it was made to consist in the profession of the creed laid down by the Attorney-General and found in the Toleration Act. Still stranger was the action of the Assembly in regard to another of the repealed laws of 1700,—that concerning “the attests of certain officers.” In this same session of 1705 they passed, as a substitute for it, an Act to “ascertain the number of members of Assembly and to regulate elections,” in which it was provided that all members of that body (and its provisions were afterwards extended to all who held office of any kind under

the Crown or the Proprietary) should, before entering upon their duties, make the same declaration of their religious faith and take and subscribe the same tests, *in totidem verbis*, as those directed to be taken by Queen Anne in 1702. It is difficult to understand how the people in this Province should have been willing in 1705 to reverse the whole policy of Penn in regard to religious liberty with their own hands, and still more difficult to explain why these laws should have remained in full force upon our statute-book up to the date of the Revolution, the only modification which I can discover being the substitution of an oath of abjuration of the Pretender in 1724 for the declaration of the peculiar form of belief in the Trinity required by the Act of 1705. The letters of Logan to Penn at this period throw no light on this subject. They speak of the action of the Assembly in October, 1705, "in re-enacting those thirty-six laws (passed in the year 1700) which the Attorney-General objected against, with the amendments he desires, and in unanimously resolving to provide for the support of Government." But there is not a word concerning the most momentous change (as we must now regard it) made by their legislation in the civil status of the inhabitants up to their final separation from the mother-country by the American Revolution.

The subscription to these tests was not a mere formality, as oaths of office, as they are called, now commonly are. They were looked upon as a definite profession of faith concerning the most disputed points of theology, and such a profession in a small community where each man's religious opinions were known, and in a day when the profession of a creed implied much more than it does now, was likely to be regarded as a pretty severe test. At all events, these tests embodied doctrines some of which must have been very distasteful to those who took them during the seventy years they were in force, to say nothing of the opposition of the Quakers to tests or creeds in any form. Still, they were made the door of admission to every public post of honor, trust, and emolument in the Province. An official

record of those who took them was carefully kept, and is still preserved. There are in the custody of this Society, and in private hands, manuscript books called "QUALIFICATION BOOKS," in which you will find the signatures of all persons who ever held office in this Province from the year 1722 down to October, 1775, or nearly six months after the battle of Lexington was fought,—these signatures being appended to the Declarations and Tests imposed by the Queen's order in 1702, and made further obligatory by the Provincial Act of 1705. I ought, however, to repeat that an oath of abjuration of the Pretender must have been at one time substituted for the profession of belief in the Trinity required by the Act of 1705, but when, and for what reason, I have been unable to discover. These signatures include the names of the Governors, Members, and Clerks of the Provincial Council and of the Assembly, Judges, Mayors, Chief Burgesses throughout the Province, Sheriffs, Coroners, Receivers-General, Collectors of Customs, Officers of the Regiments of Associators, the Trustees, Provost, and Professors of the College of Philadelphia, etc., etc.

In regard to the history of the naturalization of foreigners here, it has been already stated that one of the first measures taken by Penn on his arrival was, by a law passed at Chester, to naturalize the Swedes and the Dutch whom he found here. No objection seems to have been made by the Home authorities to the exercise of such a power. But in the year 1700 an Act was passed giving to the Proprietary power to naturalize all foreigners coming to this Province. This was one of the thirty-six Acts of Assembly passed in 1700, which was disallowed and repealed by the Privy Council in 1705. The reason given by the Attorney-General for this action is this: "The Proprietary has no such power by his grant [that is, his charter], and I think it not right that he should give it to himself by this Act." In 1708 the Assembly, probably on some hint that the difficulty about naturalizing foreigners really arose from a fear lest they might be Catholics, passed an Act naturalizing by name the most

prominent Germans who had settled at Germantown, giving as the reason therefor that these people were Protestants who had either sworn to the test and subscribed the Declaration, or were ready to do so. In the years 1729, 1730, 1734, and 1737 similar special Acts of naturalization were passed, and the same reasons were given for enacting them. In 1742 a general Act was passed providing for the naturalization of those foreigners who had lived seven years in the Province, who were Protestants, and who showed their Protestantism by their willingness to take the Tests and subscribe the Declaration. This law remained in force until the time of the Revolution, and of course excluded all foreign-born Catholics, Jews, or Socinians from the rights of citizenship.

The same exclusive policy prevailed in regard to the holding of land on which churches were erected. In 1730 was passed "An Act for enabling Religious Societies of Protestants to purchase lands for Burying-grounds, Churches, Houses of Worship, and Schools," and it was provided that any Declaration of Trust theretofore made by individuals for such purposes should be executed, leaving, of course, property held by any individual for the use of the Catholics without legal protection.

It is obvious from the outline which has been given of Provincial legislation that our fathers were determined that no one should hold office in Pennsylvania unless he was an orthodox Protestant according to the standard of orthodoxy which then prevailed, that Protestants alone should have a legal right to hold church property, or any property devoted to charitable uses, and that no foreign Catholic should be naturalized. All this was certainly in direct contravention of the well-known policy of William Penn, and of the principle of liberty of conscience embodied by him in the legislation of 1682 and 1701. How is this change of opinion and of action on the part of the successors and companions of Penn to be accounted for? One thing is clear: the history of the period fails to show that the people of this Province were ever dissatisfied with this legislation, or that they

suffered any practical inconvenience in consequence of it. I have searched through the long list of vexatious complaints made by the Assembly at various times against the administration of Penn and his successors, and I have failed to find among them the slightest hint that the restrictive measures against Catholics were regarded by any one as a grievance. Indeed, the only appeal I have discovered to Penn's legislation in favor of liberty of conscience as a means of protecting civil rights is in a Protest made by the Quakers in 1775 against being forced into the military service. They say that Penn's Charter of 1701 provided that "no person living peaceably and justly in civil society should be molested or prejudiced by his religious persuasion in matters of faith or worship." They then go on to argue that compulsory military service would be a violation of that clause of the Charter which provides "that no one shall be compelled to do or suffer any thing contrary to his religious persuasion."

The law of 1705 imposing religious tests, and the other restrictive measures, if we are to judge by an examination of "The Votes of the Assembly," were adopted without discussion or opposition, and they formed, from the time of their adoption, the settled and unquestioned policy of the Province until it ceased to exist at the Revolution. If we consult our historians, they all tell the same story. Franklin's "Historical Review," which is one long-continued growl at the Proprietary government from the beginning, never alludes to the subject, while Proud and Gordon, and the many biographers of Penn who are disposed to take a highly favorable view of his character and of the government which he established here, are equally silent. When the relations between the Colonies and the mother-country became strained, and remonstrance after remonstrance against the grievances from which the Colonists suffered poured in upon the King and the House of Commons, we cannot find in any of the petitions, either of the Continental Congress or of the Provincial Assembly, the slightest complaint against the policy of confining the full enjoyment of civil rights to persons of one religious creed. Yet this policy was essen-

tially an Imperial policy, imposed like the laws of trade upon the Colonies for Imperial purposes, and it could have been uprooted at any time by Imperial legislation.

It is not to be denied that there was less difference of opinion existing on this subject between the mother-country and her Colonies than upon almost any other relating to the administration of government. A grievance such as I have described would in our day, when by a sort of political *atavism* we have gone back to Penn's principles and practice in regard to liberty of conscience, rouse at least as much indignation and opposition as an attempt to impose taxes upon us without our consent. But we are not to judge our forefathers by our standard. To them the value of religious liberty as a practical principle of government was not priceless, as it seems to us, and Penn's voice proclaiming it became literally, after the early enthusiasm had cooled, like "that of the Prophet crying in the wilderness." Nothing is more suggestive than the opinion expressed by James Logan (certainly the most enlightened man in the Province) in a letter to Penn concerning the Charter of 1701, by which freedom of conscience had been guaranteed perpetually. "Be pleased," he says, "not to set such a value as thou dost upon the Charter granted, for most are of opinion it is not worth so many pence, and if mine were asked, I should still rate it much lower."

The people here, as in the other Colonies, were intensely Protestant, and although a large majority of them professed to hold Penn's principles, they retained in a great measure the hereditary hatred and distrust of the doctrines and worship of the Catholics which centuries of religious feuds had bred in England. They were evidently satisfied to extend the principle of toleration as far here as had been done in England, but no farther. The Catholics were few in number (not fourteen hundred in the year 1757), they were of course very feeble, and doubtless thought it most prudent not to put forward any claims on the score of religious liberty. At any rate they were silent, probably satisfied if they were not molested in their worship.

There was another and a special reason why animosity against Catholics and unwillingness to trust them with any power were kept alive in this Province. During the first sixty years of the last century this continent, as is well known, was the seat of wars between England and France, —wars begun indeed in Europe, but waged here also for the purpose of extending the Colonial possessions and power of these rival nations. France had all the advantages of a military power. She controlled our present northern frontier, she had established a chain of fortified posts from the Lakes to the Ohio, she was leagued with the Indians, and she boldly avowed her purpose to attack and subjugate the English Colonies on the Atlantic coast. Throughout the Colonies and in England there was a general feeling that French conquest meant not merely subjection to the French Crown, but the establishment here of the Roman Catholic religion with all its claims. However chimerical these fears on the part of the Colonists may appear to us now, they were very real to our fathers, who had been taught that despotism and popery were convertible terms. Every means was employed to rouse public opinion so that the Province might be fully prepared to resist the threatened invasion. The French were represented not merely as enemies, but also, what was probably much worse in the eyes of many, as Catholics, and thus the intensely strong Protestant feeling of the Colonists was appealed to, not unsuccessfully, in stimulating a warlike enthusiasm. So deep was this feeling, at least in Pennsylvania, which seemed of all the Colonies the most exposed to an invasion, that strong efforts were made by the leading men of the Province to convince the people that Protestantism and allegiance to the British Crown were inseparably connected.

In 1754 a Society was established here called the German Society, by such sober-minded citizens as Dr. Franklin, the Rev. Dr. Muhlenberg, the patriarch of the Lutheran Churches in this country, and the Rev. Dr. Smith, then Provost of the College, the object of which was to establish schools for the children of German settlers upon what was then the frontier

of the Province, where they might be taught the knowledge of God, and be made loyal subjects of what was called "the Sacred Protestant Throne of Great Britain," and thus be saved from the machinations of "French and Popish emissaries." These schools were so successfully supported that at one time no fewer than seven hundred children were taught in them.

But a mighty change in men's opinions on this subject took place as the Revolution drew nigh. The Provincial Conference which undertook in the early part of the year 1776, at the request of the Continental Congress, to call a Convention to frame a State Constitution, resolved that every Delegate elected to that Convention should, before he entered upon his duties, take and subscribe the following profession of his religious faith: "I, A. B., profess faith in God the Father, and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore, and I acknowledge the Holy Scriptures to be given by Divine inspiration." I cannot tell whether the Convention obeyed the mandate of the Conference, but it is certain that in searching for some test which should be a proper qualification for office under the new order of things it could find none better than the old one which had been laid down by Penn in his Charter of 1701, viz., an acknowledgment of a belief in one God and in the Divine inspiration of the Holy Scriptures, and accordingly they adopted it. Thus was the memory of William Penn vindicated, and his great principle of liberty of conscience found at last a perpetual place in that very instrument of government which had for its main object the disowning forever of his authority and that of his heirs in every other respect. The complete change of public opinion became every day more apparent. Not only was a Catholic priest (afterwards Bishop Carroll, of Baltimore) sent in company with Dr. Franklin and Mr. Chase at the outset of the Revolution, with the unanimous concurrence of the Continental Congress, to persuade the French Catholics in Canada to join the revolt, but in 1779 an Act was passed by our State Legislature reorganizing the Col-



lege of Philadelphia and appointing new Trustees, one of whom was to be, as the Act described him, "the Senior Minister of the Roman Churches in Philadelphia." Hence it happened that the Rev. Father Farmer, a Jesuit, was, probably, the first Catholic, and, certainly, the first Catholic priest, who ever held civil office in Pennsylvania.

In regard to the attitude of William Penn himself towards these religious tests after they had been established here by Provincial law, there is some obscurity. It is clear that he regarded the Queen's order imposing them upon the officers of government in this Province as illegal, because it contravened the rights conferred by his Charter. On this subject he speaks in a letter to Logan, dated 4th October, 1703, in no uncertain terms. "Why should you obey," he says, "any order obtained by the Lords of Trade or otherwise which is not according to Patent, or law here, or the laws in your own country which are to govern you until repealed? . . . If you will resign the laws, customs, and usages tamely, instead of persisting till you see what becomes of the laws now with the Attorney-General, I cannot help it; but a decent refusal were wisest." When the Assembly in 1705, by its own unquestioned authority, repudiated the principle of liberty of conscience established by him in the Charter of 1701, Penn does not seem to have complained or remonstrated. If he acquiesced in it, it may perhaps be said that he had no choice. It is hardly conceivable that a man who had done and suffered what few men have done and suffered to establish the principle of religious liberty as the basis of civil government, who had confirmed his faith in it, after it had been departed from here under the rule of Fletcher and of Markham, by granting a new Charter, in which he declared that this principle "shall be kept and remain without any alteration inviolably for ever,"—I say it is hardly conceivable that such a man, with such a character and such a career, should have so changed his views between the years 1701 and 1705 as to approve of the legislation of the latter year in regard to religious tests. There is no evidence that he ever did ap-

prove of this measure, and all the presumptions seem to me opposed to such a conclusion.

It must not be forgotten, too, that in the year 1705 Penn was hardly a free agent in the administration of the affairs of his Province. He had been for a number of years deeply in debt,—a debt contracted by his generous attempt to carry on the government of non-paying Pennsylvania with his own private resources. As far back as the year 1696 he had conveyed the Province to Philip Ford in consideration of a large sum of money loaned by him, by what was technically a Deed of Sale, although Penn always insisted that the conveyance was intended by the parties to it simply as a pledge or security for the money borrowed. Ford having died, his family claimed that the Province belonged to them, and called upon Penn to confirm the sale. A long litigation followed, by which Penn was worried and harassed beyond endurance, and this was undoubtedly the immediate cause of that premature decay of his mental faculties by which his later life was clouded. One thing was made very clear during the progress of this lawsuit, and that was that his private fortune, added to the money which was so grudgingly voted by the Assembly of Pennsylvania, would not suffice to support the government of the Province. In this unhappy condition there was but one means which he could take to extricate himself from what appeared to be hopeless debt, and that was the sale of his Province to the Crown and the surrender of his Charter. He was engaged in negotiations with the Government for this purpose at the time when the Act of 1705 was passed. And if it met with no open opposition or remonstrance from him, it may be that one of the reasons for such a course was his conviction that had he acted differently he would have defeated his plans for the surrender of his Charter and the sale of the Province. He was therefore silent; but we must not infer that his silence was of that kind which gives consent. The condition of his mind in the beginning of 1705 is well described in a letter to Logan. "I can hardly be brought," he says, "to turn my back

entirely upon a place the Lord so specially brought to my hand and has hitherto preserved from the proud swellings of many waters, both there and here. My surrender of government is before the Lords [of Trade], . . . I can do no more. And what with the load of your unworthy spirits there, and some not much better here, with my poor son's going into the Army or Navy as well as getting into Parliament, tho' so many checks and tests upon his morals as well as education, with the loads of debt hardly to be answered from the difficulty of getting in what I have a right to of twice their value, which is starving in the midst of bread, my head and heart are filled sufficiently with trouble. Yet the Lord holds up my head, and Job's over-righteous and mistaken friends have not sunk my soul from its confidence in God." It is a sad and melancholy reflection that Penn's "Holy Experiment" failed, as so many noble enterprises have done, not from a lack of faith on the part of the projector, but from a lack of money.

Still, it may be doubted whether even if Penn had been a free agent, and as such able to control the legislation of his Province, he could in the long run have withstood the pressure of the authority of the Imperial government in this matter of religious tests. That authority was then based upon the theory of the absolute supremacy of Parliament over the Colonies, and had been formally declared by an Act passed in 1696 in these terms: "All laws, by-laws, usages, and customs which shall be in practice in any of the plantations repugnant to any law made or to be made in this Kingdom relative to the said plantations shall be void and of no effect." We may be quite sure that no consideration for the wishes of the people of this Province or any respect for the principles of its Founder would have availed in the smallest degree to prevent the adoption of any measures here which Imperial policy, in the opinion of the Ministry, might dictate. The Royal Charter would have proved no obstacle, for bitter experience here had taught that Charters to Colonies might be overridden, superseded, and those who held rights granted by them forced to a surrender

whenever it pleased the Home government to think that an undesirable spirit of independence was growing up under them. There was indeed always a large party in England which maintained up to the time of the Revolution that the principle of Royal or Parliamentary supremacy was equally applicable to ecclesiastical as to civil affairs in the Colonies. By this party it was assumed more and more distinctly as time went on, that the English Church establishment by virtue of the Royal supremacy necessarily extended to all the Colonies as dominions of the Crown, and that those who there dissented from that Church were not entitled to any other legal toleration, no matter what might be the Provincial legislation on the subject, than that accorded to Dissenters in England. Even Protestants were supposed by many to be at the mercy of a prerogative which was exercised here, fortunately, with great caution. Besides, the revival of the High Church feeling under Queen Anne, and afterwards, the intense hatred of the heir of the Stuarts, not merely because he was a Pretender to the Crown, but because he was a Catholic and his chief adherents were Catholics, not only made dissent of any kind a very unfashionable practice in England, but developed also a strong anti-papal feeling there. All the restrictive measures which had been adopted to check dissent, and to exclude the Catholics even from a toleration of their worship, were rigidly enforced in England during the first half of the last century. Of course a policy so strictly adhered to in the mother-country could not have been departed from by the Colonies even if they had desired to do so. In point of fact there was no open conflict on this subject here. The one thing about which the Colonists were in earnest which found favor in the eyes of Englishmen was their zeal for a Protestantism which, whatever might be its defects, never failed to exclude Catholics from all public offices. If the people of Pennsylvania had not profited by the lesson taught them by the proceedings of the Royal officers against Dissenters, Protestant and Catholic, in Colonies under immediate subjection to the Crown, like New York or New Jersey, and seized the opportunity to place

by their own legislation their policy in this matter in harmony with that of the Imperial government, it is highly probable that they would soon have discovered that their Charter presented a feeble barrier against the determination of the Home government to compel a uniformity of action on this subject throughout the English dominions.

This slight contribution to our knowledge of Provincial history has been made because it would seem that serious misconceptions widely prevail in regard to our fathers' relations to the general subject of religious toleration. While the truth must dispel some illusions, it can only convince us that although the government of this Province was undoubtedly distinguished above that of all the other Colonies for its mildness and clemency, yet its Quaker inhabitants did share the opinion of the whole world at that time, that an orthodox faith was an essential qualification for civil office. And it must not be forgotten, as we have said, that if different ideas on this subject had prevailed here it would have been impossible to make them the basis of a settled policy in this Province. How far the conviction that any effort in that direction would have been frustrated by the Home government discouraged any attempt at change it is impossible to say. It is hard to believe that a man like Franklin, for instance, would at any time have approved of religious tests for office; yet Franklin's name is attached over and over again in the Qualification Books to the Declaration of Faith which he was forced by law to make when he entered upon the duties of the various offices which he held. He must have been literally forced to take such a test, for we find him on the first opportunity, when the people of this Commonwealth determined to declare their independence alike of the Penn family and of the Crown of Great Britain, raising his voice against the imposition of such tests as had been taken during the Provincial period. Franklin was the President and the ruling spirit of the Convention which framed the State Constitution of 1776, and to his influence has generally been ascribed the very mild form of test which by

that instrument was substituted for the old one. Whatever we may have done in our Provincial days, it is certain that Pennsylvania was the first of all the States which, as an independent Commonwealth, dispensed with the religious tests which were required to be taken throughout the Colonies when we were subjects of Great Britain. As friends of religious toleration and as Pennsylvanians, we certainly ought to be satisfied when we can claim our Founder, William Penn, as the great modern apostle of liberty of conscience; Dr. Franklin, as soon as he was free to act, as its great champion; and a Constitution of government the first in history in which that principle, as we now understand it and have practised it during the last century, was embodied as the expression of the popular will.





